Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1340

HODGES TRANSFER COMPANY, INC., *et al.*,
Appellants,

v.

ALABAMA PUBLIC SERVICE COMMISSION, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF ALABAMA

MOTION TO AFFIRM OR DISMISS

CHARLES A. GRADDICK
Attorney General of Alabama
64 North Union Street
Montgomery, Alabama 36104

JOSEPH G. L. MARSTON, III
669 South Lawrence Street
Montgomery, Alabama 36104

STANLEY W. FOY
Attorney-Examiner for
the Alabama Public
Service Commission
Post Office Box 991
Montgomery, Alabama 36130

Counsel for Appellee: Alabama Public Service Commission

ROBERT S. RICHARD
SHAPARD D. ASHLEY
CAPELL, HOWARD,
KNABE & COBBS, P.A.
57 Adams Avenue
Post Office Box 2069
Montgomery, Alabama 36103

Counsel for Appellees: Ross Neely Express, Inc.; Schwerman Trucking Co.; Arrow Truck Lines, Inc.; Southern Haulers, Inc.; Truck Transport, Inc.; and Alabama Bulk Carrier

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The Alabama Public Service Commission, and Juanita W. McDaniel, as President, and Jim Ziegler and C. C. Whatley, as members of the Alabama Public Service Commission,[1] Ross Neely Express, Inc., Baggett Transportation Company, Inc., Alabama Bulk Carriers, Inc., Schwerman Trucking Company, Arrow Truck Lines, Inc., Southern Haulers, Inc., and Truck Transport, Inc., the Appellees herein, move to affirm the judgment of

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[1] These named Commissioners were in office at the time the Order in question was entered. The present Commission consists of W. J. Samford, Jr., President, Jim Folsom, Jr., and Pete Mathews, Associate Commissioners.

the Supreme Court of Alabama, or to dismiss this appeal, on the ground that the question presented is so unsubstantial as not to need further argument.

JURISDICTION

The Appellees respectfully submit that the proper avenue for review by the Court is not through appeal under 28 U.S.C. § 1257(2), but rather by a petition for a writ of certiorari, pursuant to 28 U.S.C. § 1257(3). As the Jurisdictional Statement of the Appellants makes clear, there is no allegation that any statute of the State of Alabama is repugnant to the Constitution or laws of the United States. The Alabama Public Service Commission, in construing the Certificate in question, performed no legislative function; instead, by making findings of fact and applying established law thereto, this body acted in a quasi-judicial capacity, *Towns Truck Line v. Cotton State Express, Inc.*, 266 Ala. 131, 94 So. 2d 402 (1957).

QUESTIONS PRESENTED

Whether the Alabama Public Service Commission, which construed the Appellants' Certificate of Public Convenience and Necessity Number 518 only to authorize the transporation of shipments which either originate at or are destined to Uniontown, Alabama, based such interpretation on findings of fact which were either unsupported by, or contrary to, the evidence in the case; and whether the action by the Alabama Public Service Commission in construing this Certificate constitutes a deprivation of the Appellants' property without due process of law.

STATEMENT OF CASE

By an Order of September 23, 1942, as supplemented and amended by an Order of November 11, 1942, the Alabama Public Service Commission (herein Appellees and hereinafter referred to as APSC) issued Certificate of Public Convenience and Necessity Number 518 to Appellant Hodges Transfer Company, Inc.'s predecessor in interest. This certificate stated that the holder thereof was authorized to transport specified commodities: ". . . [B]etween Uniontown and points in Alabama within 200 miles radius thereof, irregular routes."

In a complaint of November 12, 1976 before the APSC, Complainants (common carriers who are also Appellees herein) alleged, *inter alia*:

> 8. It is the position of Complainants that the transportation by Defendant, Hodges Transfer Company, Inc., of shipments pursuant to Certificate No. 518 which neither originate at nor are destined to Uniontown, Alabama, are illegal and outside the scope of authority contained in Certificate No. 518. [Citation omitted]

In answer to said complaint, the Defendants (Appellants herein) admitted that they were operating as alleged in ¶ 8, but denied that such operations were illegal, thereby making the interpretation of Certificate No. 518 the issue before the APSC.

Hearing was held before the APSC's Chief Administrative Law Judge, Carl L. Evans, at which time various items of evidence were introduced, including Certificate No. 518. The defendants stipulated that they were transporting shipments which neither originated at nor were destined to Uniontown, Alabama. Having made findings of fact and having applied these facts to Alabama precedent, Judge Evans recommended to the

APSC that it issue a cease and desist order limiting the Defendants' common carrier activities to that which was authorized by the certificate in question, *i.e.*, to shipments which either originated at, or were destined to Uniontown, Alabama.

The APSC, after reviewing the evidence and briefs, adopted Judge Evans' findings and recommendations and ordered the defendants to stop ". . . [T]ransporting commodities pursuant to said Certificate No. 518 which neither originate at or are destined to Uniontown, Alabama." *Report and Order of the Commission* (*Jurisdictional Statement,* A-15 at A-16).

The APSC's report and order was subsequently appealed to, and affirmed by, the Circuit Court of Blount County (*Jurisdictional Statement* at A-9), and the Supreme Court of Alabama, *Hodges Transfer Company, Inc., et al. v. Alabama Public Service Commission, et al.,* 376 So. 2d 680 (Ala. 1979) (*Jurisdictional Statement* at A-3).

ARGUMENT

The Complainants and the APSC, Appellees herein, respectfully submit that the findings and order of the APSC were entirely proper in light of the evidence presented and in light of established Alabama law. Despite all of the evidence and testimony offered by the Defendants, the only relevant facts were the terms of Certificate No. 518 itself and the actual scope of Defendants' common carrier activities allegedly performed pursuant to said Certificate.

Several established canons of construction are applied in any hearing to determine the scope of authority granted in such certificates. First, a certificate of public

necessity and convenience is a type of public franchise and is construed strictly against the recipient, *Towns Truck Lines, Inc. v. Cotton State Express, Inc., et al.,* 264 Ala. 345, 87 So.2d 421 (1956), and matters extrinsic to the express terms thereof, including a carrier's record of transportation prior to issuance, are not to be used as interpretive aids unless those terms are found to be ambiguous, *Dealers Transit, Inc. v. APSC, et al.,* 374 So. 2d 1325 (Ala. 1979); *APSC v. A-OK Motor Lines, Inc.,* 287 Ala. 182, 249 So. 2d 838 (1971); *Deaton Truck Lines, Inc. v. Birmingham-Tuscaloosa-Mobile Motor Freight Line,* 264 Ala. 345, 87 So. 2d 421 (1956).

The reason for this "parole evidence rule," which is embraced by virtually all jurisdictions, is particularly clear and compelling when applied to orders of an agency charged with regulating the activities of a particular industry. The APSC, and similar agencies throughout this nation, employ technical words and phrases to express specific and particular ideas in order to assure uniformity and certainty in the field of operations within their purview. If such terms were not allowed to stand on their own, consistency would be replaced with chaos. Requiring the APSC and the Court of Alabama to consider in every case all records pertaining to the issuance of a certificate in order to find some alleged intent formed decades ago, as the Defendants seek to do here, could easily create the predicament of a number of certificates containing identical granting language, but resulting in several totally different modes of operation.

In their *Jurisdictional Statement* at page 12, the Defendants apparently adopt this rule of construction that excludes such extraneous matters by relying on the following language from *Hilt Truck Lines—Investigation*

of Operation & Revocation of Certificates, 117 MCC 22 (1972):

> We are aware of the possibility that a grant of radial, rather than nonradial, authority may have been intended. The grant actually made, however, is the one that we are called upon to construe. . . . Such franchises must be construed on their face without examining the underlying record unless those terms are patently ambiguous.
>
> [117 MCC at 24.]

The Interstate Commerce Commission's position in *Hilt Truck Lines, supra,* concerning the avoidance of extrinsic evidence and the avoidance of the issue of intent is consistent with decisions of the Supreme Court of Alabama, which caution against delving into questions of intent, *e.g., Towns Truck Lines, Inc., supra.* The Defendants' contentions in this regard are strikingly similar to those posed in *Towns Truck Lines, Inc., supra,* to which the Supreme Court of Alabama responded:

> It may have been that, on the original "grandfather" application, which resulted in the present certificate which has now come to be held by this respondent, the commission *might* have intended that the applicant be authorized to serve all points. . . . But the Court can only construe, it cannot reform, the certificate. [94 So. 2d at 404.]

In determining the scope of Certificate No. 518, Judge Evans, the Circuit Court of Blount County, and the Alabama Supreme Court had only to refer to the controlling Alabama precedent on this point, *Martin Truck Lines, Inc. v. Alabama Tank Lines, et al.,* 261 Ala. 163, 73 So. 2d 756 (1954), which settles any possible alleged ambiguity that might have ever existed in the authority held by Defendants. In *Martin Truck Lines, Inc., supra,* the Supreme Court of Alabama interpreted Certificate

No. 824, which contained authority to transport certain commodities: "Between Birmingham, Alabama, and Mobile, Alabama, and all points within a radius of one hundred twenty-five (125) miles of Birmingham, Alabama." [73 So. 2d at 757.]

In holding that all transportation of shipments must either originate at, or be destined to, Birmingham, Alabama, the Supreme Court of Alabama only considered the express terms of the certificate. Reliance on any other factors has been declared *dicta, Hodges Transfer Company, Inc., et al. v. APSC, et al.,* 376 So. 2d 680 (Ala. 1979) (*Jurisdictional Statement* at A-3).

In their *Jurisdictional Statement,* the Defendants have mainly relied on Interstate Commerce Commission decisions to support their contention that Certificate No. 518 grants nonradial authority. This reliance is misplaced, since the interpretation of an APSC certificate is purely an intrastate Alabama matter, and I.C.C. decisions are considered merely for guidance, and then only when there is no Alabama precedent, *APSC v. A-OK Motor Lines, Inc., supra.*

The Defendants also rely on *A-OK Motor Lines, Inc., supra,* for the proposition that radial authority can be expressed only by using the terms used in that case: ". . . [B]etween Birmingham and points within 15 miles thereof 'on the one hand,' and [certain points named in the certificate] 'on the other hand.'" [249 So. 2d at 839.]

The Complainants and APSC concede that the Supreme Court of Alabama held that such language granted only radial authority. Such case, however, in no way stands for the proposition that the particular language in the certificate considered in that case is the exclusive

method of expressing radial authority. *Martin Truck Lines, Inc., supra,* is still intact and controlling in this case, as made clear by the Supreme Court of Alabama when considering Certificate No. 518 below, *Hodges Transfer Company, Inc., et al., supra.*

If the APSC committed an error in issuing Certificate No. 518 in response to the 1942 "grandfather" application of the Defendants' predecessor in interest, the proper and sole remedy was an appeal to an Alabama circuit court from the 1942 final order and decision within thirty (30) days from the entry thereof. *Code of Alabama,* 1975, § 37-3-24 [formerly *Code of Alabama,* 1940, Title 48, § 301(27)]; *APSC v. A-OK Motor Lines, Inc., supra.* Realizing that such redress expired twenty-eight years ago, the Defendants now attempt to obtain expanded transportation authority by seeking a reversal of Alabama rules of interpretation and construction applied to APSC certificates of public convenience and necessity. Such attempts have properly been determined to be without merit, not only by the APSC, but also in the Circuit Court of Blount County and in the Supreme Court of Alabama, both of which latter courts were compelled by Alabama law to presume that the findings and recommended order of Judge Evans and the final Order of the APSC are *prima facie* just and reasonable. *Code of Alabama,* 1975, § 37-1-124; *Southern Haulers, Inc. v. APSC,* 331 So. 2d 660 (Ala. 1976); *APSC v. Redwing Carriers, Inc.,* 279 Ala. 659, 187 So.2d 342 (1966). In appealing to these courts below, the Defendants carry the burden to show the contrary. *Ibid.*

The Defendants nevertheless continue to challenge the decisions of all of the administrative bodies and courts hearing their cause by contending that they were deprived

of their property without due process of law. The first basis for this claim, that no finding of fact was made by the APSC, is without foundation. Judge Evans made findings relating to the actual scope of Defendants' operations and the express terms of Certificate No. 518, *Examiner's Report and Recommended Order* (*Jurisdictional Statement* at A-19). These findings were reviewed, approved and adopted by the APSC, *Report and Order of the Commission* (*Jurisdictional Statement* at A-15).

The Defendants' second constitutional contention, that the APSC ignored Defendants' evidence, which allegedly supported their interpretation of Certificate No. 518, and entered findings and an order contrary to, and unsupported by the evidence in the case, is equally without merit. As discussed above, under Alabama law, evidence allegedly tending to show a carrier's scope of transporting activities prior to issuance of a certificate of public convenience and necessity is not pertinent to the interpretation of such certificates. *APSC v. A-OK Motor Lines, Inc., supra.* The APSC and the Complainants have sought, and failed to find, any cases which hold that the applying of such rules of construction and evidence constitute arbitrary and capricious conduct amounting to a deprivation of property without due process of law.

Even assuming that the Supreme Court of Alabama committed some error, this would not, of itself, violate the Defendants' "due process" rights, since the *U.S. Constitution,* Amendment XIV does not assure that state court judgments will be free from error, but only requires that the fundamental principles of justice be honored, *e.g., Gryger v. Burke,* 334 U.S. 728 (1948).

CONCLUSION

Wherefore, the Appellees (APSC and Complainants) respectfully submit that the question upon which this cause depends is so unsubstantial as not to need further argument, and respectfully move the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in this cause by the Supreme Court of Alabama.

Respectfully submitted,

ROBERT S. RICHARD

And

SHAPARD D. ASHLEY

Counsel for Appellees Ross Neely Express, Inc.; Schwerman Haulers, Inc.; Arrow Truck Lines, Inc.; Southern Haulers, Inc.; Truck Transport, Inc.; and Alabama Bulk Carrier

CHARLES A. GRADDICK

Attorney General of Alabama

And

JOSEPH G. L. MARSTON, III

Assistant Attorney General of Alabama

And

STANLEY W. FOY

Attorney-Examiner for the Alabama Public Service Commission

Counsel for Appellee Alabama Public Service Commission